

The Commonwealth of Massachusetts

AERONAUTICS COMMISSION

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EXECUTIVE DIRECTOR
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October 22, 1997

Office of the Secretary
Federal Communications Division
Washington, DC 20554

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OCT 30 1997

RE: MM Docket Number 97-182
Preemption of State and Local Zoning and Land Use Restrictions on the Siting,
Placement and Construction of Broadcast Station Transmission Facilities

Dear Sir/Madam:

The Massachusetts Aeronautics Commission (MAC) vigorously opposes the preemption of state and local zoning and land use restrictions on the siting, placement, modification and construction of broadcast station transmission facilities, hereinafter referred to as the "Preemption", for the following reasons:

- 1. The time deadlines for a state or local government or instrumentality thereof to act are unrealistic.** Normally, required Notices of Proposed Construction or Alteration are required to be sent to the appropriate FAA official at least thirty (30) days before the earlier of the following dates: (i) the date the proposed construction or alteration is to begin; or, (ii) the date an application for a construction permit is filed. The exception to this requirement is that notices relating to proposed construction or alteration that is subject to the licensing requirements of the Federal Communications Act may be sent to the FAA at the same time the application for construction is filed with the Federal Communications Commission, or at any time before that filing. (14 CFR 77.17) The combined effect of the proposed Preemption rule and the aforesaid aviation regulation is that state and local governments would be forced routinely to make a ruling on the application prior to having the benefit of the FAA's determination of whether the construction or alteration poses a hazard to air navigation. Furthermore, the proposed Preemption rule would: (a) force state and local governments to alter long-standing and reasonably efficient procedures and schedules to comply with the deadlines; or, (b) provide an incentive for a state or local government to be less willing to waive minor procedural or administrative flaws in applications. The former is an egregious infringement upon the rights of states and localities to protect the legitimate interests of their citizens; the latter thwarts the intent to have an efficient, timely DTV buildout.
- 2. The modified, relocated or new transmission facilities could represent hazards to air navigation.** The Federal Aviation Administration (FAA) requires airport sponsors who receive a federal grant from the FAA under the Airport Improvement Program (AIP) to execute and comply with certain Assurances. Assurance Number 20 requires airport

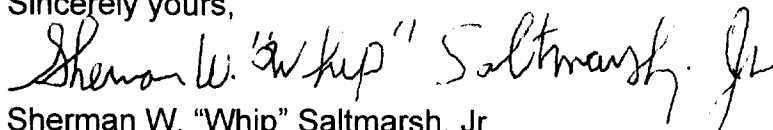
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sponsors to "take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards." Assurance Number 21 requires airport sponsors to "take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of airport to activities and purposes compatible with normal airport operations, including the landing and takeoff of aircraft". Many airport sponsors are municipalities. The Preemption would frustrate the efforts of airport sponsors to comply with the aforesaid federal Assurances.

3. **The Preemption undermines federal, state and local safety initiatives.** Significant time and monies are expended on an annual basis to protect instrument and visual operations to the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and preventing the establishment or creation of future airport hazards. In our state alone, we estimate that upwards of \$5,000,000 will be spent over the next five (5) years to remove vegetation from protected airspace. Given the clear federal and state mandate to protect the flying public and the limited availability of federal, state and local funding for these safety projects, expediting the siting, placement, modification and construction of broadcast station transmission facilities without due regard for the protection of airspace and the significant past, present and future federal, state and local investments in protecting that airspace will increase the risk for unsafe conditions at airports and fiscal irresponsibility.
4. **The proposed Preemption rule is inconsistent with certain policies of the United States.** It is a national policy to undertake airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic so that safety and efficiency increase and delays decrease (49 U.S.C. 47101(a)(7)). Similarly, it is a national policy that the FAA's Airport Improvement Program should be administered to encourage projects that employ innovative technology, concepts and approaches that will promote safety, capacity and efficiency improvements in the construction of airports and in the air transportation system (49 U.S.C. 47101(a)(11)). Careful analysis would lead to the conclusion that the proposed Preemption rule is inconsistent with the national policy to encourage the development of transportation systems that use various modes of transportation in a way that will serve the States and local communities efficiently and effectively (49 U.S.C. 47101(a)(5)). The proposed Preemption rule enhances the opportunity for the construction of transmission facilities that reduce safety, efficiency and capacity, thereby frustrating the efforts of federal, state and local governments to fully comply with said national policies.

We appreciate the opportunity to submit our comments on the proposed Preemption rule.

Sincerely yours,



Sherman W. "Whip" Saltmarsh, Jr.
Chairman